

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Vermont Telephone Company	)	WC Docket No. 08-56
Petition for Declaratory Ruling	)	
Whether Voice over Internet Protocol	)	
Services Are Entitled to the	)	
Interconnection Rights of	)	
Telecommunications Carriers	)	

**COMMENTS OF QWEST CORPORATION AND  
QWEST COMMUNICATIONS CORPORATION**

Qwest Corporation, an incumbent local exchange carrier (“LEC”), and Qwest Communications Corporation (collectively “Qwest”), a Voice over Internet Protocol (“VoIP”) provider, files these comments in response to Vermont Telephone Company’s (“VTel”) petition for declaratory ruling.<sup>1</sup> VTel asks three questions. First, whether or not only “telecommunications carriers” are entitled to interconnection with LEC facilities by the express terms of Sections 251 and 252 of the Communications Act of 1934, as amended (the “Act”). Second, whether or not VoIP providers are entitled to interconnection pursuant to those Sections of the Act when they assert they are not “telecommunications carriers.” Third, whether or not Comcast Phone of Vermont, LLC (“Comcast”), as a VoIP provider, is a telecommunications carrier and, therefore, is entitled to interconnection pursuant to those statutory provisions.

Qwest responds that as a matter of law under Sections 251 and 252 of the Act only telecommunications carriers are entitled to interconnection with LEC facilities. Second, it

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<sup>1</sup> See Public Notice, *Pleading Cycle Established for Comments on Vermont Telephone Company’s Petition for Declaratory Ruling Regarding Interconnection Rights*, WC Docket No. 08-56, DA 08-916, rel. Apr. 18, 2008.

follows that a VoIP provider that is not a telecommunications carrier is not entitled to interconnection pursuant to those Sections of the Act. The third question is a question of fact, on which Qwest expresses no opinion.

**I. SECTIONS 251 AND 252 ARE TRIGGERED BY THE PROVISION OF A TELECOMMUNICATIONS SERVICE**

As a matter of law only telecommunications carriers are entitled to interconnect under Sections 251 and 252 of the Act. The Federal Communications Commission (“Commission”) has stated that the “obligations imposed by sections 251 and 252 of the Act are triggered by the provision of a ‘telecommunications service.’”<sup>2</sup> The Wireline Competition Bureau has emphasized that “the rights of telecommunications carriers to section 251 interconnection are limited to those carriers that, at a minimum, do in fact provide telecommunications services to their customers, either on a wholesale or retail basis.”<sup>3</sup>

Comcast has requested an interconnection agreement with VTel, seeking direct and indirect network interconnection, number portability, reciprocal compensation, and access to

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<sup>2</sup> *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability; Petition of Bell Atlantic Corporation For Relief from Barriers to Deployment of Advanced Telecommunications Services; Petition of U S WEST Communications, Inc. For Relief from Barriers to Deployment of Advanced Telecommunications Services; Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Technology; Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act; Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996; Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service*, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 FCC Rcd 24011, 24028-29 ¶ 34 (1998) (footnote omitted).

<sup>3</sup> *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3520 ¶ 14 (2007) (footnote omitted).

directory listings and directory assistance.<sup>4</sup> Section 251(a) governs Comcast's request for direct and indirect network interconnection. That Section imposes upon telecommunications carriers the duty to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers[.]"<sup>5</sup> Thus, the Act does not require interconnection with an entity that is not a telecommunications carrier. The Commission's regulations further require that the telecommunications carrier that has interconnected under Section 251(a) "may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well."<sup>6</sup> Similarly, the Commission has made clear that the reciprocal compensation rules apply to "transport and termination of telecommunications traffic between LECs and other telecommunications carriers."<sup>7</sup> It excludes traffic that is "interstate or intrastate exchange access, information access, or exchange services for such access."<sup>8</sup> Likewise, Section 251(b)(3), which governs the request for access to directory listings and directory assistance, states that this duty runs to "competing providers of telephone exchange service and telephone toll service[.]"<sup>9</sup> Again, this duty runs only to telecommunications carriers.

In sum, Congress and the Commission have made it clear that the rights granted by Sections 251 and 252 run to telecommunications carriers.

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<sup>4</sup> Petition for Declaratory Ruling at 2.

<sup>5</sup> 47 U.S.C. § 251(a).

<sup>6</sup> 47 C.F.R. § 51.100.

<sup>7</sup> 47 C.F.R. § 51.701(a).

<sup>8</sup> 47 C.F.R. § 51.701(b)(1) (citation omitted).

<sup>9</sup> 47 U.S.C. § 251(b)(3); *see also* 47 C.F.R. §§ 51.205, 51.217.

## **II. ENTITIES THAT ARE NOT TELECOMMUNICATIONS CARRIERS ARE NOT ENTITLED TO INTERCONNECTION UNDER SECTIONS 251 AND 252**

As seen above, only telecommunications carriers are entitled to interconnect under Sections 251 and 252. It follows that an entity that asserts it is not a telecommunications carrier is not entitled to interconnect under Sections 251 or 252.

## **III. WHETHER COMCAST IS A TELECOMMUNICATIONS CARRIER IS A QUESTION OF FACT**

The determination of whether Comcast is a telecommunications carrier is a question of fact. The standard is not controversial. “The Act defines ‘telecommunications service’ as ‘the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.’ This definition largely, if not entirely, incorporates the common law rule that, to be a common carrier, an entity must publicly ‘hold itself out’ as offering telecommunications indiscriminately to whatever similarly situated customers might have use for such telecommunications.”<sup>10</sup> It follows from this standard that when an entity that provides telecommunications but not on a common carrier basis seeks interconnection, that entity would not be entitled to interconnection pursuant to Sections 251 or 252 of the Act.<sup>11</sup>

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<sup>10</sup> *In the Matter of Bright House Networks, LLC, et al., Complainants, v. Verizon California, Inc., et al., Defendants.*, 2008 FCC LEXIS 3295, at \*19-20 ¶ 16 (Enf. Bur. Apr. 11, 2008) (citations and footnotes omitted).

<sup>11</sup> It is worth noting that there is also a pending petition seeking forbearance from the Enhanced Service Provider (“ESP”) exemption to the extent that exemption applies to interconnected VoIP providers. *In the Matter of Petition of the Embarq Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption*, WC Docket No. 08-8, Public Notice, 23 FCC Rcd 348 (Jan. 14, 2008); Erratum, 2008 FCC LEXIS 750 (Jan. 18, 2008). Forbearance from the ESP exemption would not transform a VoIP provider that asserts it is an information service provider into a telecommunications carrier. Thus, forbearing from the ESP exemption would not

#### IV. CONCLUSION

In sum, interconnection pursuant to Sections 251 and 252 is limited to telecommunications carriers. An entity that is not a telecommunications carrier is not entitled to interconnection under those Sections.

Respectfully submitted,

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make any VoIP provider that is an information service provider entitled to interconnection under Section 251.

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST CORPORATION AND QWEST COMMUNICATIONS CORPORATION** to be

- 1) filed via ECFS with the Office of the Secretary of the FCC in WC Docket No. 08-56;
- 2) served via e-mail on the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission at [CPDcopies@fcc.gov](mailto:CPDcopies@fcc.gov); and 3) served via e-mail on the FCC's duplicating contractor, Best Copy & Printing, Inc. at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

/s/ Ross Dino

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